STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SNOHOMISH COUNTY CLERKS' ASSOCIATION, Complainant,	)	CASE 20074-U-06-5105
vs.	)	DECISION 9834 - PECB
SNOHOMISH COUNTY, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Cline and Associates, by *Christopher J. Casillas* and *James V. Smith II*, joined on the brief by *James M. Cline* and *M. Katherine Kremer*, Attorneys at Law, for the union.

Perkins Coie, by *Lawrence B. Hannah*, Attorney at Law, for the employer.

On January 6, 2006, the Snohomish County Clerks' Association (SCCA) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging Snohomish County (employer) violated RCW 41.56.140(1), (2), and (4). The SCCA represents a bargaining unit of employees working in the Snohomish County Clerk's Office.[1] This controversy concerns the employer's conduct while bargaining for a first agreement with the newly certified bargaining representative.

The complaint was reviewed under WAC 391-45-110 and a deficiency notice was issued on February 22, 2006. A preliminary ruling was included in that notice. It summarized the causes of action as:

[1] *Snohomish County*, Decision 8864 (PECB, 2005).

> Employer interference, domination or assistance of a union, and refusal to bargain by a breach of its good faith bargaining obligations by insisting the SCCA waive its statutory rights, delay tactics, failing to give reasons for its proposals that demanded fundamental changes in current working conditions, bargaining to impasse on illegal subjects of bargaining and its total bargaining conduct which demonstrated an intent to frustrate agreement.

The agency assigned the case to the undersigned Examiner on February 28, 2006. The employer filed its answer, accompanied by affirmative defenses, on March 22, 2006.

On April 12, 2006, the SCCA amended its complaint. I issued a preliminary ruling on April 20, 2006, summarizing a new cause of action as discrimination in violation of RCW 41.56.140(1) by the employer's total bargaining conduct and refusal to bargain, in reprisal for union activities. That amendment added new factual allegations that the employer interfered with employee rights and refused to bargain when it cancelled a mediation meeting, made a regressive proposal, and failed to send a representative to the table with the authority to bargain. The employer answered the amended complaint on May 4, 2006.

On June 26, 2006, the SCCA amended its complaint a second time. I determined these allegations added new facts, however did not add new case theory to the previously filed complaint. Those new facts included the employer's actions at a hockey game on April 12, 2006. The employer responded to the alleged violations contained in the second amendment on July 17, 2006.

I held a hearing on July 27 and 28, and October 24 and 25, 2006.

The SCCA amended its complaint a third time at the outset of the hearing on October 25, 2006. The employer objected to amendment of the complaint on the last day of hearing. I found the amendment added examples of continuing alleged bad faith bargaining, but did not add new case theory nor allege additional violations of the statute. Therefore, I admitted the amendment as an exhibit and directed the SCCA to present its evidence after the employer finished its presentation. I instructed the employer to present its defense after it heard the union's evidence and noted I would allow additional days of hearing if needed to fully present the evidence and any rebuttal. Neither party requested additional days of hearing.

The parties filed briefs to complete the record on February 2, 2007. The employer also filed a motion to correct the hearing transcript that same day. I grant the employer's motion.

ISSUES

Because there are multiple intertwined issues in this case, I arranged them into four main sets.

ISSUE 1 - Did the employer fail to bargain in good faith and interfere with employee rights by engaging in the following actions:

- Bargaining conduct that demonstrated an intention to delay, frustrate or avoid reaching agreement;
- Cancelling a mediation meeting;
- Insisting on acceptance of collective bargaining proposals based on County personnel guidelines that included waivers of statutory bargaining rights;

- Failing to provide reasons for its bargaining proposals which demanded fundamental changes to the status quo;
- Bargaining to impasse over illegal or non-mandatory subjects of bargaining;
- Making regressive proposals;
- Refusing to send a representative to the table with the authority to bargain;
- The totality of its bargaining conduct?

ISSUE 2 - Did the employer's total conduct during negotiations interfere with employee rights in reprisal for SCCA activities?

ISSUE 3 - Did the employer discriminate against SCCA representatives and interfere with employee rights by the conduct of the county executive at an ice hockey game?

ISSUE 4 - Did the employer attempt to dominate, control or interfere with the rights of the SCCA or its representatives by:

- The conduct of the county executive at the ice hockey game;
- Its total bargaining conduct designed to assist another union?

The SCCA did not present any substantive evidence to prove the facts newly alleged on October 25, 2006. Therefore, those allegations are dismissed.

I find the following: 1) the employer breached its good faith obligation by its bargaining conduct designed to intentionally frustrate and delay bargaining; 2) the employer failed to provide reasons for its proposals to change working conditions from the

status quo such that the union had the opportunity to make counter proposals that might satisfy the employer's concerns; 3) the employer regressively withdrew its agreement to certain provisions; 4) the employer's total bargaining conduct was in violation of good faith and appeared to assist or favor AFSCME over SCCA and interfered with employee rights; 5) the employer's total bargaining conduct violated the statute.

The employer: 1) did not demand the SCCA waive its statutory bargaining rights; 2) did not bargain to impasse over illegal or permissive subjects; 3) did not refuse to send a representative with authority to bargain; 4) did not discriminate against the SCCA representatives; 5) did not attempt to dominate or control the SCCA.

Thus, I find the employer violated the statute in certain instances, and I dismiss the remaining allegations.

STATUTE APPLICABLE TO ALL ISSUES

Chapter 41.56 RCW enumerates unfair labor practices in the following section:

> RCW 41.56.140 Unfair labor practices for public employer enumerated.
>
> It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain or coerce public employees in the exercise of their rights guaranteed by this chapter;
>
> (2) To control, dominate or interfere with a bargaining representative;
>
> (3) To discriminate against a public employee who has filed an unfair labor practice charge;
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> (4) To refuse to engage in collective bargaining.

All these issues involve the duty to bargain under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. That statute defines collective bargaining (duty to bargain) as:

> RCW 41.56.030 Definitions.
> . . . .
> (4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

ANALYSIS

This case involves the bargaining for an initial contract between the employer and the SCCA following its certification[2] as exclusive representative of a unit previously represented by the Washington State Council of County and City Employees, American Federation of State, County, and Municipal Employees (AFSCME).

ISSUE 1 - Did the Employer Interfere and Refuse to Bargain in Good Faith?

Allegations

The SCCA alleges the employer disregarded the status quo when it insisted on using its own personnel rules as the basis for the contract, acceptance of which would require the employees to waive their statutory bargaining rights. It also asserts the employer did not provide reasons for its proposal to use the personnel rules.

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[2] *Snohomish County*, Decision 8864, issued February 8, 2005.

It further complains that the employer's proposal changed existing employee working conditions in a manner so unpalatable that it knew the SCCA would not accept its proposals. The SCCA maintains that the employer deliberately delayed bargaining, which forced the SCCA to capitulate to its unlawful demands because the employees repeatedly experienced large increases in health insurance premiums which they could not afford. SCCA also claims the employer bargained to impasse over illegal or permissive subjects. Finally, it argues that the unpalatable proposals and higher medical premiums were intended to punish the bargaining unit for repudiating AFSCME representation.

Legal standard

The statutory obligation to bargain in good faith includes a duty to engage in full and frank discussion of disputed issues, and to explore possible alternatives, if any, that may be mutually acceptable. *South Kitsap School District*, Decision 472 (PECB, 1978); *Mansfield School District*, Decision 4552-B (EDUC, 1995). The bargaining obligation also imposes a duty on the parties to explain their proposals and provide their reasoning in a manner designed to permit the other party to counter propose language that may be accepted. *Fort Vancouver Regional Library,* Decision 2350-C (PECB, 1988) and citations therein. While the obligation to bargain in good faith does not require a party to grant a concession or agree to a specific proposal, neither is a party entitled to reduce collective bargaining to an exercise in futility. *City of Snohomish*, Decision 1661-A (PECB, 1984). However, the refusal by an employer to modify its original proposal may not be a *per se* violation of the statute. *Thurston County*, Decision 5633 (PECB, 1996). An adamant insistence on a bargaining position is not, by itself, bad faith bargaining. Failure of a party to offer a counterproposal is not necessarily an indication of bad faith.

Mansfield School District, Decision 4552-B. It may develop that agreement will not be reached on each and every issue raised by the parties in contract negotiations, even after good faith bargaining on both sides of the bargaining table. The totality of the parties' conduct in collective bargaining, including communications sufficient to intelligently evaluate the merits of proposals, are integral elements of good faith. *Federal Way School District*, Decision 232-A (EDUC, 1977).

Distinguishing between good faith and bad faith in bargaining can be difficult in close cases. *City of Snohomish*, Decision 1661-A. It is risky to approach collective bargaining with a take-it-or-leave-it attitude on items of importance. *Mansfield School District*, Decision 4552-B. Nevertheless, a party may maintain a firm position on a particular issue throughout bargaining, if the resolve is genuinely and sincerely held, and if the totality of its conduct does not reflect a rejection of the principle of collective bargaining. *City of Snohomish; Pierce County*, Decision 1710 (PECB, 1983). Thus, "hard bargaining" is not inherently illegal or bad faith bargaining, unless there is an intent to not bargain in good faith. *Fort Vancouver Regional Library*, Decision 2350-C.

Good faith bargaining is never from scratch, but from the status quo. *Shelton School District*, Decision 579 (PECB, 1979). The parties in *Shelton* negotiated a successor agreement. This case involves a first agreement with a successor union, a somewhat different situation, but the principle still applies. The status quo means the working conditions in place at the time the petition was filed. WAC 391-25-140(2) provides that:

> Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the commission under this chapter.

For a newly certified bargaining unit, protection of the status quo extends from the date the petition was filed up to the certification of the new exclusive representative. At that point the employer must bargain in good faith. The onset of a collective bargaining relationship marks a status quo of wages, hours and working conditions from which the parties' future conduct may diverge depending on what the parties agree to in bargaining.

Therefore, the status quo for wages, hours and working conditions includes those mandatory subjects in place at the time the parties were negotiating their first contract. Here the status quo included the premium cap on the employer's contribution toward medical insurance,[3] a deferred compensation program, flexible scheduling, holiday overtime, union security, grievance arbitration, and other working conditions in place at the time bargaining commenced.

APPLICATION OF THE GOOD FAITH STANDARD

Intent to Delay, Frustrate or Avoid Reaching Agreement?

Negotiations history

The first bargaining session was held on March 31, 2005.[4] Attorney William Barrett represented SCCA along with President Kendra Mooney and various others from the bargaining unit. Labor Consultant Howard Stickler represented the employer along with David Ellgen from the human resources office. Strickler reported to Deputy County Executives Gary Weikel[5] and Mark Soine, who were assigned

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[3] *Snohomish County,* Decision 9655 (PECB, 2007).

[4] Allegations of employer conduct before July 6, 2005, are untimely as independent violations of the statute; however they are included to provide background to show the totality of conduct.

[5] Prior to July 2005. Mark Soine began employment thereafter.

labor relations responsibility for the county by County Executive Aaron Reardon. Barrett proposed a list of ground rules and made numerous requests for information. The parties talked about ground rules briefly.

At the next meeting on April 22, 2005, the employer presented its own ground rules. No agreement was ever reached on ground rules and the parties proceeded without them.

This record establishes that during March and April 2005, the parties attempted to address peripheral issues such as grievances and Barrett's three lengthy requests for information. The employer and the SCCA were addressing issues that apparently both of them considered more important than commencing formal negotiations.

The employer made its first proposal on May 3, 2005. That proposal consisted of what was numbered as eight[6] articles:

1) Parties to Agreement;
2) Recognition;
3) Hours of Work;
4) Management Rights
5) Contracting Out
6) No Strike No Lockout
6) Conditions of Employment and Wages;
7) Entire Agreement;
8) Duration.

The article titled *Conditions of Employment and Wages* simply stated: "All other conditions of employment and the wages of employees shall be governed by the Snohomish County Code, Title 3A." This proposal

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[6] The number was misstated as the number 6 appears twice.

removed certain status quo working conditions the bargaining unit then enjoyed. Those reductions included no agency shop, no compensatory time, no job sharing, no double time for work on Thanksgiving and Christmas, no deferred compensation, no ability of the SCCA to file a grievance, no just cause for discipline, and no grievance arbitration.

Howard Strickler, the employer's spokesperson, gave his copy of the county personnel rules to Barrett that day. Strickler testified he told the SCCA bargaining team that he wanted to work through the language issues before tackling the money issues. He said he thought the employer's wage and benefit offer would be in the range of what other county employees received.

The SCCA made its initial proposal at the next meeting on June 7, 2005. That proposal labeled wages as "reserved." Michelle Strohrmann, SCCA officer, testified the SCCA proposal was based on the AFSCME contract with some "enhancements."[7] At Strickler's request, the parties spent the next eight sessions[8] reviewing SCCA's contract proposal line by line. Strohrmann testified the SCCA bargaining team did not understand why the employer wanted to go over the proposal line by line as it was based almost completely on the 2001-04 AFSCME agreement. Strickler testified he wanted the SCCA to explain its proposal because he wanted to know what the SCCA's issues were. As it was not written with the changes clearly identified,[9] he wanted to know exactly what changes had been made to the AFSCME contract.

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[7] Testimony established that the employer found the employee bill of rights provision particularly onerous.

[8] June 17, July 8, 15, August 3, 10, 17, 31, September 7, 2005.

[9] Such as striking out old language and underlining new language.

Barrett canceled a bargaining session set for June 24, 2005, because the ferry was down and his alternate mode of transportation would get him to Everett at a time he considered too late to begin the bargaining session.

The SCCA made what Strickler viewed as a "complete proposal" on July 8, 2005. That proposal included a wage increase of 100% of the CPI, market adjustment of 5%, and capped the employee medical premium. No counter proposals were made by either party. Strickler testified the remaining bargaining sessions in July and August were spent going over the SCCA's proposal at his request. On August 31, 2005 Strickler suggested to Barrett that the parties request mediation.

The employer made its second offer on September 7, 2005. This proposal added articles entitled: *Definitions; Association Activities; Expense Reimbursement; Holidays; Vacation Leave; Sick Leave and Disability; Other Leaves; Recruitment and Examination and Appointment to Positions; Probationary and Trial Periods; Separation, Layoff, Recall, and Reinstatement; Grievance Procedure; Employee Relations; Discipline; Insurance Benefits;* and separated *Wages* and *Conditions of Employment* into two articles. Wages and medical premiums were reserved.

The employer did not substantially change its initial stance in this proposal. In two sections it included the words found in the personnel rules instead of using simply the title of the county code; in nine other sections it left the reference to the code. It added seven of the nineteen definitions found in the SCCA's proposal. It made its own proposal on bulletin boards, which included prior approval by the County Clerk of SCCA postings on the board other than notice of meetings, elections, and appointments. It introduced a proposal to give non-employee officers and representatives of SCCA access to the employer's premises with prior notice to the County Clerk, as long as work was not disrupted, and reserved

the right to designate a meeting place or provide an escort. The employer proposed no loss of pay to employee officers of SCCA for time spent: 1) posting notices in non-public areas; 2) attending meetings with the employer as part of the grievance procedure; or 3) resolving issues arising under the contract, although this particular time was subject to approval of the department manager. The employer revised the grievance procedure found in the personnel rules by adding extra response and filing time. However, the county executive still heard the grievance as the final step of the process. The employer retained its cap on medical insurance premiums, which allowed the employees' premiums to continue to rise. Otherwise the employer retained its proposal to let the county personnel rules cover the bargaining unit's working conditions.

The SCCA viewed the employer's second proposal with dismay. In addition to the reduction in status quo working conditions, SCCA believed that the employer made little movement from its first proposal that the SCCA considered draconian.

The parties filed a joint request for mediation with PERC on September 16, 2005.[10] On September 23, PERC received a letter from Barrett informing it that he was no longer employed by the SCCA as its spokesperson. A mediator was assigned and scheduled a mediation session in October.

Mediation

Christopher Casillas attended the first mediation session held on October 25, 2005, as the SCCA's new chief spokesperson. He advanced

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[10] Coincidentally, the employer signed a one year collective bargaining agreement with AFSCME on September 19, 2005. That agreement contained an employer paid deferred compensation not to exceed 1% of wages, a general wage increase of 2.5% and a cap on the employee share of medical premiums.

a new proposal labeled "what if." He used a strikeout and underline format for this proposal. Strohrmann testified the SCCA team believed this new language would be more "palatable" to the employer because it deleted much of what the employer found onerous, including the employee bill of rights, new sick leave incentive, and the 5% market adjustment to wages, and reduced the proposed increase to tuition reimbursement to the $3,000 SCCA believed the employer had previously indicated was acceptable. Strohrmann testified they removed those items because they were not part of the status quo and were probably too hard to change at this point. The SCCA explained their proposal to the employer. Strohrmann recollected the parties discussed cost of living increases and insurance; she testified that Strickler "specifically said we would get what AFSCME would get." Strickler remembered saying something similar, such as "he expected the Association would get what AFSCME got."

The parties then discussed the employer's September proposal. The SCCA bargaining team explained why it was not an option for them to simply agree to the inclusion of the county code in the agreement. They reasoned they would not have the ability to bargain changes to their working conditions brought about by any changes the employer made to the county code. They also questioned the employer's team concerning its reasons for changing the status quo. They explained their dismay with not having access to grievance arbitration or just cause for discipline, with the requirement for approval for posting items on their bulletin board, the lack of compensatory time and deferred compensation, and their belief that the management rights article caused them to waive their bargaining rights over mandatory subjects of bargaining. Strohrmann testified without challenge the employer's response was "sorry, that is the way it is."

Strickler said the employer team would have to review the SCCA proposal away from the table before responding. He testified he was

unclear on the meaning of the "what if" label and that despite questioning Casillas he remained unclear.

On November 21, 2005, the employer countered with what it termed a "thirty-two page comprehensive proposal." This offer included the employer's first offer of a general wage adjustment, equal to 80% of the CPI. The employer kept the 2004 cap[11] on its share of the medical premiums. It did not substantively change its first proposal on the language issues.

Additional mediation sessions were conducted on December 6, 7, and 21, 2005, February 1 and 3, March 8, 15, and 31, April 27, May 15, October 13 and 18, 2006.

On December 6, 2005, the SCCA gave the employer a document that compared their proposal and the employer's proposal side by side. Strohrmann testified without challenge that the SCCA also presented a proposal to the employer. That proposal marked numerous sections in which the SCCA adopted the employer's language. It also noted that the SCCA accepted the employer's proposal on job sharing.[12] The employer did not refute the SCCA assertion on job sharing.

On December 21, 2005, Strickler presented a document which he produced from a copy of the SCCA December 6 proposal that Casillas emailed to him on December 9. Strickler color coded the document in order to track changes made by each party.[13] Strohrmann testi-

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[11] Employer premium cap of $540.16.

[12] Strohrmann explained the employer stated it would not object to job sharing if the cost did not exceed that of filling the position with one person.

[13] The employer attempted to introduce the document at the hearing, however withdrew it when Strickler could not remember the meaning of the color coding.

fied she did not understand the document because it appeared to contain both proposals without reference to what wording belonged to which party.[14] The SCCA presented what it termed a "wage and benefit what-if proposal." It proposed a cap on employee medical insurance premiums[15] and a general wage increase tied to the CPI, however it did not designate any certain percentage increase.

On February 3, 2006, the employer proposed a 90% cost of living increase to be applied on the date of signing; retained the status quo on medical premiums, and proposed a one year agreement. It rejected the SCCA proposal for a compensation study and proposed including the SCCA position classifications in the general clerical class study that would be conducted during 2006. Additionally, it proposed an article entitled *Seniority, Reduction-In-Force, Layoff (Article 19 of old AFSCME contract)*. Strickler testified that the managers in the clerks office disliked the SCCA proposal to use the bargaining unit as the layoff unit, therefore they proposed using a department-wide layoff unit.

SCCA members testified that by the end of February they desperately wanted to reach agreement, because the employer informed them of the new increased rates for medical insurance and the upcoming open enrollment period March 1 through 14. The employer had distributed open enrollment packages that detailed the entire spectrum of available plans and associated premiums to all employees. The SCCA employee only premium would rise to $132 per month, while the AFSCME (and non-represented) employee only premium would be capped at $58 per month.

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[14] Strickler testified the parties discarded that document because it was very difficult to decipher.

[15] The SCCA did not specify a definite dollar premium amount.

On March 10, SCCA presented a package to the employer that included accepting eight of the employer's proposals from November 21, 2005, and modifying five others in a manner it hoped would be acceptable to the employer. In addition, it adjusted some of its proposals and retained others from its October 25, 2005, proposal. By this time the SCCA thought it had accepted most of the employer's language except for: a union activities provision similar to the AFSCME agreement; a job sharing provision; a lay off provision similar to AFSCME; just cause; grievance arbitration; no contracting out; and union security. It maintained its provisions to retain the economic benefits it would have received if represented by AFSCME: employee cap on health insurance premium, COLA, and deferred compensation. The employer declined to respond to the SCCA's counter proposal on March 10 because the employer's team wanted to talk to Soine before making a counter proposal.

Cancelled meeting

The session scheduled for March 15, 2006, was canceled by Strickler, at Soine's direction, after an article appeared in the March 13 *Everett Herald* concerning the SCCA employee medical premiums. Strickler testified Soine was extremely angry[16] when he read an article in the morning newspaper that talked about the SCCA negotiations. That article noted that "many of the clerk's workers faced a roughly 200% increase over monthly medical premiums in 2004," and referenced a letter written to Reardon and the county council by County Clerk Pam Daniels on March 6, 2006. The newspaper quoted that letter, in which Daniels expressed her "extreme concern over the impact of the medical insurance increases on the lives of her staff." She stated "these increases seem unjust, unfair, and

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[16] Soine testified he was only angry, however I do not find that testimony credible. Soine still appeared "angry" at the hearing months after the newspaper article.

not good business sense . . . *especially in light of the fact that none of these increases have been (or are going to be) passed on to the majority of Snohomish County's union and non-union employees."*[17] (Emphasis added.) She asked Reardon to "reconsider, re-evaluate, and/or justify the drastic medical insurance premium increases being applied to the represented staff of the Clerk's Office."

In cancelling a mediation session due simply because he was angry over a newspaper article, Soine over-reacted. The employer decided to engage in hard bargaining, which while legal, tends to incite hard bargaining by the other party. The SCCA took action[18] to put pressure similar to what it experienced on the employer. Soine and Reardon were public officials and as such should be hardened to reading about their actions in the local newspaper. In cancelling this meeting the employer provided an additional example of its intention to delay and frustrate bargaining.

Although Soine testified that he responded[19] to Daniels, her plea ostensibly went unheeded. The top employer officials, either Reardon or Soine, appeared to have their own reasons for refusing to agree to similar medical premiums for this bargaining unit. Daniels put the employer on notice, if it did not believe the clerks themselves, of the importance of rising health care costs to the employees who worked in her office. Reardon and Soine deliberately disregarded that information.

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[17] A copy of the newspaper article and Daniels' letter were accepted into evidence.

[18] SCCA testified it did not send Daniel's letter to the newspaper, it did however, contact reporters about its concerns over the bargaining process.

[19] On March 10, 2006, Soine wrote Daniels stating that bargaining relationships take time to develop and the employer's team was working toward agreement.

The next mediation session was held on March 31, 2006. On that date, the employer removed the language on job sharing, salary survey and deferred compensation that it had agreed to in its December 21, 2005, proposal.

Because the employer cancelled the March 15 session, three weeks had elapsed between meetings in the month during which open enrollment for medical plans was offered. The employer argues in its closing brief that "the elevation by SCCA of the two week delay [in mediation] to epic proportions, is groundless. . . . Even if a contract deal had been made on March 15, the county's ratification process would have taken a month or so, which would be weeks after the March 22 paycheck-deduction date . . . hence, the two weeks delay is meaningless." However, this record shows that at least once during the pendency of this case, the employer conducted an open enrollment in August. Routinely, employers alter the open enrollment period pattern to accommodate the signing of a collective bargaining agreement. It could have been done here.

By its actions in spending eight bargaining sessions reviewing the SCCA proposal line by line; unreasonably cancelling a mediation session; in making and continuing to adhere to proposals that were a substantial reduction in the status quo and predictably unacceptable to the SCCA; by failing to provide explanations for its proposals sufficient to allow the SCCA to understand its interests; and by offering and adhering to both economic and non-economic proposals containing substantially less desirable conditions than those being offered to other employees, I conclude the employer deliberately delayed, frustrated and avoided agreement with SCCA. In addition, I find that the employer's failure to provide explanations for its proposals, discussed below, reveals further incidents of its intent to delay, frustrate, or avoid agreement.

Waiver of Bargaining Rights?

The SCCA believed the employer's management rights clause contained language that waived the SCCA right to bargain any changes the employer made to terms and conditions of employment. Specifically, in its brief the SCCA alleges that the management rights clause contained waivers of its ability to bargain scheduling, work rules and regulations, discipline, subcontracting and layoffs. Additionally, the SCCA argued the employer's use of its own personnel rules removes the ability of the SCCA to bargain over working conditions on behalf of the bargaining unit.

Legal standard

The Commission has historically held that a waiver of statutory bargaining rights must be *consciously made*, clear and specific. *City of Wenatchee,* Decision 8802-A (PECB, 2006) citing *City of Yakima*, Decision 3564 (PECB, 1990) (emphasis added).

Analysis

SCCA did not present specific evidence concerning the alleged waivers contained in the management rights article. My review of the management rights article in the September 7, 2005, employer proposal, shows cogent language that is frequently preferred by employer representatives. However, that language is not sufficient without further evidence for me to find it constitutes a waiver of bargaining rights.

The SCCA witnesses testified that they believed the employer's citing of the personnel rules in the collective bargaining agreement without including the specific language of those rules would require them to waive their right to bargain any changes to those rules. Strickler testified that he disagreed with that belief. Nevertheless, by September 2005 the employer had included the actual language of the personnel rules in its contract proposal. Albeit,

in its closing brief the employer uses convoluted logic to explain its reasoning for proposing the personnel rules. It claims it did so because "it was interested in grouping the SCCA employees with the non-represented employees more than with the AFSCME employees." However, I notice it abandoned that logic when it came to the monetary terms of the contract.

I understand the SCCA resistance to the strong language initially proposed by the employer. That language may give control over working conditions to the employer, as the personnel rules may be changed at any time by the county council. That language, when coupled with the zipper clause at the end of the agreement, could provide an argument that the union waived its rights. However, general language usually falls short of the high standard set for finding a waiver. *Chelan County*, Decision 5469-A (PECB, 1996). To the extent that the proposed language specified certain itemized subjects to be within the employer's prerogative to change without bargaining, it could constitute a waiver. Without such specificity, it would be difficult to prove a waiver of statutory rights. Here, the employer eventually proposed including the wording found in sections of the county code for certain contract provisions instead of the mere title of the particular county code. That action gave the SCCA the ability to bargain over changes to that language.

I cannot conclude the employer proposed a management rights article that forced the SCCA to waive its bargaining rights. Nonetheless, I do conclude that the employer did not insist on maintaining language that might have been found to constitute a waiver concerning certain mandatory subjects of bargaining.

Reasons for its Proposals?

Testimony at the hearing established that the employer set forth very few of its reasons for the SCCA. Strickler explained that during the employer's bargaining preparation it decided that the

personnel rules were the place to start because the employees rejected the AFSCME agreement. Thereafter, Strickler testified that during bargaining sessions, he gave general rationale to SCCA; he did not supply specific reasons to them. He had general parameters on economic issues from Soine and the Council. Finally, in response to repeated requests from the SCCA for justification for the employer's positions, he wrote down the employer's rationale in April.

On April 27, 2006, Strickler provided the SCCA with a two page document entitled RATIONALE BEHIND THE COUNTY'S POSITION IN BARGAINING WITH THE CLERK'S ASSOCIATION. It contained this general statement:

> The County, on the other hand, believes that it is necessary to alter certain important provisions in the AFSCME agreement that were the result of years of bargaining and several different County administrations. From the start of negotiations, the County proposed following the County Personnel Code as a model for the new contract and the rules for working conditions of employment. It should be noted that approximately 500[20] County employees work under that Code with few if any problems. In addition, the County seeks *to reverse some costly economic trends in the AFSCME contract* as well as other County labor agreements. (Emphasis added.)

Additionally, the document provided the employer's rationale for ten principal areas of disagreement. That rationale follows:

> 1. Grievance Procedure. The Personnel Code contains a grievance procedure that has worked well for all concerned.[21] It does not contain grievance arbitration, which

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[20] The unrepresented employees, plus managers.

[21] The "concerned" are the unrepresented employees, who comprise 16.7% of the total workforce by my calculation (using the numbers of employees supplied by the employer at the hearing). SCCA represents 2.6% of that same workforce.

the Association desires to have added. The County sees no advantage to including arbitration in the process. Arbitrators routinely overturn perfectly valid actions of employers on perceived minor technical or procedural issues, or overturn decisions specifically reserved for the employer's discretion under the contract. Having the grievance procedure terminate in a court action well (sic) help avoid superfluous grievances and may ultimately be less costly to both parties.

2. Just Cause. The Association seeks to add just cause to the discipline process. While this standard is common in labor agreements, it is not needed in this situation. The Personnel Code provides a long list of behaviors that spell out standards of behavior for both the employee and the employer. More often than not the tax payers are the ones that pay the price when justified disciplinary actions are overturned through the retention of problem employees and the unjustified payment of back wages.

3. Management Rights. These contract negotiations present the opportunity for the County to regain its right to manage the workforce efficiently. The AFSCME agreement has chipped away at those rights over the years. The County will bargain "aggressively" to regain those rights.

4. Hours of Work. The County has proposed hours of work language that is based on the old Clerk's Addendum because it fits the Clerk's operational situation. Some changes to the County's position may still be possible through bargaining as we get closer to agreement but the pattern found in the old addendum is preferable.

5. Association Activities. The Association has requested an agency shop. We believe the Association has enrolled everyone in the bargaining unit through the dues check off provided in the PECBA. Therefore, agency shop is not needed.

6. Separation, Layoff, Recall & Recruitment. A substantial difference here focus (sic) on the bargaining unit-wide layoff proposal of the Association. The Clerk's management is opposed to this as unwieldy and difficult to manage in the event of layoffs. There are too many skill sets in this bargaining unit to simply adhere to overall seniority. The County has proposed language similar to that found in the Clerk's Addendum.

> 7. Insurance Benefits. The Association has proposed the pattern established in the last AFSCME contract[22] which placed a cap on what employees will pay. The County sees this bargaining as opportunity to cap the County's ever escalating medical insurance contributions in lieu to capping employee contributions. *Medical costs continue to escalate and the County will be pursuing this objective in cost containment with all bargaining units.* (Emphasis added)
>
> 8. Contracting Out. Appropriate contracting out language is essential. The County is willing to use the AFSCME language if it is preferred to the County's proposal on this issue. However, it is an essential management function and one that the County will not surrender in a new contract with a new bargaining unit.
>
> 9. Other Economic Items. The Association again seeks to replicate the economic provisions of the AFSCME contract. This includes COLA and deferred compensation. However, these items were agreed to with AFSCME as the result of trade-offs in the bargaining process over a period of years. Opportunities for such trades have not yet presented themselves in these negotiations. Moreover, we see no justification for the Association's demand for a signing bonus.[23]
>
> 10. Term of Agreement. The Association continues to insist on a one year agreement with retro to January 1, 2006. The County adheres to the position that retroactivity for and (sic) initial contract is not legal and therefore, remains committed to a one year agreement from the date of signing and ratification by the parties.

Analysis

Integral to the good faith collective bargaining process, the parties are expected to explain both their own proposals and their reasons for rejecting the proposals of the opposite party, so that their rationale may be properly understood and new proposals may be

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[22] One year term starting in September 2005.

[23] Testimony established that the SCCA asked for a signing bonus as a substitute for retroactivity, as the employer was opposed to retroactive pay.

formulated. That did not happen here. The employer's failure to adequately explain its reasoning interfered with these employee's rights. Moreover, a close examination of the employer's total bargaining conduct reveals the negotiations here most closely resemble an exercise in futility.

Employer's rationale 1

More than 80% of the employees of this employer have grievance arbitration. For those employees, the employer did not offer any example of an arbitrator who overturned a "perfectly valid action." During the earliest years of labor relations, employers, unions and the courts held up arbitration as a cost effective, efficient method of resolving disputes. Some labor statistics show that employers win the majority of arbitration cases nationwide.[24]

Rationale 2

The employer repudiated the SCCA request for a just cause provision saying it was not needed. However, it did propose a "good cause" standard which it derived from an unidentified court case. While my review of the behaviors listed in the personnel rules shows it to be extensive, so is the development of the just cause standard. Numerous arbitration decisions cited in Elkouri & Elkouri's treatise, *How Arbitration Works*, Sixth Edition, draw no particular distinction between the single word and the various modifiers of the term cause.[25] While not every arbitrator will agree with the employer, neither will every court judge. If such respected authorities as Elkouri & Elkouri do not find a distinction in the

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[24] HOW UNIONS CAN IMPROVE THEIR SUCCESS RATE IN LABOR ARBITRATION, February-April 2006 *Dispute Resolution Journal*, stated unions won only an average of 36% of the arbitration awards between 1993-2003.

[25] Page 932.

adjectives that may modify cause, I am left to wonder why this employer goes to such lengths to do so. I find the employer's explanation for rejecting "just cause" as a pretext for avoiding agreement with SCCA.

Rationale 3

The employer did not present specific management rights that it believed were "chipped away" by negotiations with AFSCME. The only management rights that I found that might be considered limited by the AFSCME agreement were: 1) contracting out of unit work was not grievable; 2) laid off employees received favorable consideration and were put on all registers for which they met the minimum qualifications; 3) attendance at negotiations and grievance meetings was on work time; 4) employees could use leave without pay to attend union conferences; and 5) employees could work alternative schedules. I do not find anything particularly onerous about any of those "chips." Nor do I find the employer's "onerous" rationale persuasive when it concerned less than 3% of its employees.

Rationale 4

The employer specifies that it prefers the AFSCME *Hours of Work* language, but fails to identify what it specifically dislikes about the SCCA proposed language. It does not provide reasoning for its refusal to agree to fifteen days notice of schedule changes and job sharing with employer approval, which are the only changes I can find in the SCCA proposed language.

Rationale 5

The employer's belief that the majority of employees currently pay association dues does not sound like a reason for not agreeing to a union security provision; rather, it outlines the employer's perception about current union membership. The employer's closing brief calls the issue one "of symbolic importance" as only two

bargaining unit employees are not SCCA members. Although the employer correctly asserts that the issue of agency shop is negotiable, I can only guess at the employer's real rationale for its refusal to consider a union security provision. The employer's attitude was improper. Its objection appears to be solely directed at the SCCA, as other bargaining units have union security provisions in their contracts. This employer has no history of objecting to union security. I fail to find the employer's written reason for refusing to agree to an agency shop provision convincing.

Rationale 6

The employer states it prefers the AFSCME language on RIF, but again fails to point out what differs between the SCCA provision and the AFSCME article. I cannot find any substantive difference. The AFSCME contract language is favorable to employer interests with the only employer concessions being notice to the union within 7 days of the decision and laid off employees receiving hiring preference in any class for which they meet the minimum qualifications.

Rationale 7

The employer asserts it wants to control health care costs and therefore continues to insist on retaining the cap on its premium share. However, I believe this to be a disingenuous rationale. The evidence shows the employer agreed to remove that cap on its premium contribution and replace it with an employee contribution cap during negotiations for a *one year* successor AFSCME agreement which was signed on September 19, 2006. It also removed the cap for unrepresented employees. Those actions are inconsistent with the above stated objective.

Rationale 8

The employer asserts it needs appropriate contracting out language. It states the language contained in the AFSCME agreement would be

acceptable, but not preferred. That may be an acceptable rationale on its own; however it is the only rationale of the ten provided that I find plausible on this record.

Rationale 9

In its rationale for other economics, the employer asserts the wage adjustments and deferred compensation contained in the AFSCME agreement were the result of trade offs in other areas. However, this record shows that the unrepresented employees historically received the same wage increase as AFSCME represented employees, which did not necessitate a trade for any other provision, as no bargaining is required. Ellgen testified that 71% of the county's employees have deferred compensation. The AFSCME employees have deferred compensation. The employees now represented by SCCA had deferred compensation prior to their decision to change representatives. The employer has not persuaded me by this record that continuing deferred compensation for an additional 2.6% of the employees amounted to an economic issue of huge import. It was certainly a reduction of the status quo.

Rationale 10

The employer argues that providing retroactive wage increases is illegal without what is known as a *Christie*[26] agreement. That case found that, without such an agreement between the employer and the union, retroactivity is a gift of public funds.[27] Here the SCCA dropped its request for retroactivity and substituted a $750 signing bonus in its counter proposal on March 10, 2006. I do not find that unusual or unreasonable for parties in similar circumstances.

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[26] *Christie v. Port of Olympia*, 27 Wn. 2d 534 (1947)

[27] *Snohomish County*, Decision 9607 (PECB, 2007) found retroactive pay without such an agreement was an illegal subject of bargaining, however that charge was not before me.

Conclusion

Based on the evidence and testimony presented, I conclude the employer was merely going through the motions without actually seeking to adjust its differences with the SCCA. The employer spent an unusually long time at the table going over the SCCA proposal. Its explanation of wanting to understand the differences between the SCCA proposal and the AFSCME contract, while possible, is not probable. I do not find it credible that four months of scrutiny was needed to understand the SCCA proposal. Strickler is an experienced negotiator; he and Ellgen had negotiated with AFSCME for the county for the two previous contracts. I do not find it credible that they would require that amount of time to review and compare the SCCA proposal to the AFSCME contract, which was familiar to both of them.

As presented here, this complaint revolves around the employer's predetermined position to adhere to its own personnel rules or guidelines. The SCCA clearly expressed its distress at being forced into an agreement without many of the benefits it had under the AFSCME agreement and with far fewer benefits than the majority of county employees.[28] The contract terms proposed by the employer remained fundamentally unchanged during bargaining. It did not modify its position on any of the significant issues during the entire course of bargaining with the SCCA. Good faith bargaining encompasses meaningful discussions which include genuine reasons for objecting to proposed language. While the law does not compel the employer to agree to any proposal, it does require the employer to come to negotiations with an open mind that is receptive to reaching accord with the union. It did not.

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[28] Testimony and evidence showed that the bargaining units represented by AFSCME comprise 50.4% of the total county employees. The addition of the non-represented employees who were extended the medical premium rates and wage increases given to AFSCME, brings the percentage to 65.5%.

I conclude the employer intentionally proposed language it knew was not only aggressive, but also predictably unacceptable to the SCCA from the outset. The employer avoided agreement that was reasonably possible in March 2006 by refusing to offer the cap on the employee's medical premium.[29] I believe its adherence to the employer cap on medical premiums for the SCCA while concurrently giving an *employee* cap to AFSCME and the non-represented employees is by itself sufficient to find retaliation against these employees for exercising their rights under RCW 41.56. Coupled with the above list of pretextual or unsupportable reasons for its actions, the overwhelming evidence shows this employer retaliated against these employees for exercising their rights. No credible reason was given either to the SCCA or to me for bargaining with these employees in such a manner.

Bargaining to Impasse over Illegal Subjects?

SCCA maintains that the employer attempted to bargain over illegal bargaining subjects when it proposed its own personnel guidelines as the basis for the contract.

SCCA asserts that the proposal the employer sent to their attorney electronically on May 17, 2006, was a "last, best and final offer." The employer did send that counter proposal in response to a request from SCCA on May 16 for such an offer. That circumstance prompted this allegation that the employer bargained to impasse.

Legal standard

The Commission has historically followed the precedent set by the United States Supreme Court in *NLRB v. Wooster Division of Borg-*

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[29] As given to AFSCME and the non-represented employees approximately five months earlier.

Warner Corp., 356 U.S. 342 (1958). It distinguished between mandatory subjects of bargaining (wages, hours and working conditions) and permissive subjects (those management and union rights which are deemed as "may" but not "shall" bargain). In *City of Anacortes,* Decision 6380 (PECB, 1999), the Commission defined illegal subjects of bargaining as those matters which are prohibited by statute or the state constitution. Neither party is obliged to bargain over those matters.

Analysis

My analysis starts with determining whether or not the employer proposed illegal subjects[30] as part of this agreement. SCCA did not present any evidence that the employer attempted to bargain over matters prohibited by statute or the state constitution. It believed the employer's proposal to leave many of the employee's terms and conditions of employment, such as tuition reimbursement and education leave, governed by its personnel rules involved bargaining over illegal or permissive subjects. However, its belief was not in line with the law.

On May 10 SCCA electronically requested the employer give it a "last, best and final" offer. No meeting occured on May 10. At the May 15, 2006, mediation session, the employer presented a document entitled COUNTY'S SUMMARY AND "WHAT IF" PROPOSAL TO CLERK'S ASSOCIATION. It noted in the opening paragraph that the document summarized what the employer believed were the SCCA's responses to its proposals and a common areas of agreement. This proposal was not characterized as a final offer.

SCCA then put forward a "what if" proposal on medical premiums only. It proposed linking the medical premiums to a percentage of the top

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[30] No evidence or testimony was presented on non-mandatory subjects.

step of pay range 309 which was applicable to one classification in the bargaining unit. It thought a new approach might work. Strickler testified his notes made directly on this proposal indicated that using the percentages proposed by SCCA, some of the medical premiums would be more and some less than those paid by the AFSME bargaining units.

On May 17, 2006, in response to SCCA's requests for a "last, best and final" offer, Strickler sent Casillas an electronic "what if" package proposal.

It may have believed the May 17, 2006, "what if" contract proposal it received from the employer was a last, best and final offer and therefore, decided to take it for a ratification vote. The belief of SCCA is not enough to demonstrate impasse.

Although Strickler testified he thought the employer still had elasticity in its May 2006 proposal, the record does not show that was the case. The employer changed its stance in very minor ways. That lack of substantive change, however, does not make the employer's proposal an illegal subject of bargaining nor prove the parties were at impasse. Rather, this record indicates the employer intended to delay agreement as discussed above.

Regressive Proposal?

The SCCA asserts the employer's March 31, 2006, proposal was regressive because it did not include proposals on every subject put forward by the SCCA. Strohrmann testified that issues that the SCCA believed the employer previously agreed to were deleted: job sharing, salary survey, deferred compensation, and family leave for grandchildren and step-children. The ability to contract out work was included again. SCCA alleges that proposal made little or no movement from the employer's November 21, 2005, proposal, there was

no change substantively, and acceptance of the proposal by the SCCA required them to waive their right to bargain over mandatory subjects (as discussed above).

Legal standard

The Commission has determined regressive bargaining occurs when one party at the bargaining table in some manner evidences *an attempt to make a proposal less attractive.* In order for a party to regressively bargain in violation of RCW 41.56.140(4) and (1), the bad faith element must infect the collective bargaining process. *City of Redmond*, Decision 8879-A (PECB, 2006) (emphasis added.)

The SCCA has the burden of proof to show the truth of the facts asserted in its complaint. The SCCA asserted that the employer's failure to propose language on every issue that they included in their March 10 counter proposal was regressive bargaining, as was the employer's withdrawal of language to which it had previously agreed. However, the law does not compel agreement, and therefore the employer was free to decide whether or not to counter propose language on any issue on the table, as long as it was making a good faith effort to reach an overall agreement.

Analysis

Strohrmann testified without rebuttal that on March 31, 2006, the employer dropped the language on job sharing, salary survey and deferred compensation that had been included in its December 21 proposal. She also testified without challenge that the employer withdrew its agreement to include grandchildren and step-children for bereavement leave. In the March 31 employer proposal, job sharing, salary survey, and deferred compensation are struck out. In other sections of the leave article the employer wrote in "okay"; however, I am less clear about the agreement on including grandchildren and step-children, as they are included in one section of

language and not included in another section. The employer did not present evidence of how it had attempted to re-configure its proposal with job sharing or the salary survey or deferred compensation in another place so as to make the proposal as attractive as it had been previously. Without such an explanation, the employer's proposal on its face appears less appealing, and, in the case of deferred compensation, includes fewer dollars than its previous proposal.

I conclude the employer regressively deleted sections which it had previously accepted.

Authority to Bargain?

SCCA complains that Strickler did not have authority to bargain on behalf of the employer. It points to the fact that no issues were ever tentatively agreed to by the parties. Additionally, Strickler continually said he wanted to review the SCCA proposal away from the table or that he needed to check with Soine before making a counter proposal.

Legal standard

The Commission distinguishes between actual, apparent and implied authority as follows:

> With actual authority, the principal's objective manifestations are made to the agent; with apparent authority, they are made to a third person or party. Implied authority is actual authority, circumstantially proved, which the principal is deemed to have actually intended the agent to possess. Washington courts have held that the "authority to perform particular services for a principal carries with it the implied authority to perform the usual and necessary acts essential to carry out the authorized services."

Lower Columbia College, Decision 8117-B (PSRA, 2005)(citations omitted).

Public sector collective bargaining is different from its private sector counterpart because "public sector unions cannot expect management representatives to possess final authority to conclude agreements at the bargaining table." *Sultan School District*, Decision 1930 (PECB, 1984), *aff'd* , Decision 1930-A (PECB, 1984). Keeping that distinction in mind, Commission precedent requires a bargaining team to be able to effectively represent the employer in labor relations, by virtue of its position at the bargaining table. The team must have actual authority to reach tentative agreements, not tentative authority to reach actual agreements.

Therefore, the employer must provide its bargaining team with the authority to consider different proposals and to make commitments on mandatory subjects of bargaining on behalf of the employer, subject to approval by the county commissioners.

Analysis

Strickler testified he had "general authority on most language issues, however he could not 'wheel and deal on other issues.'" The financial parameters were given to Strickler by the county council. Soine asserted Strickler had authority within the scope of the council's parameters. Soine further testified that Strickler was in charge of negotiations when he was in the room, but admitted that Strickler was starting to check with him more frequently by March 2006. Based on the testimony and evidence presented at the hearing, it appears Strickler was given authority to hard bargain.

CONCLUSION

I conclude the employer's strategy during the bargain was one of intentional delay and avoiding agreement rather than a failure to give Strickler authority to bargain.

I find the employer intended to delay and frustrate bargaining by proposing unpalatable language, failing to give genuine reasons, and making regressive proposals.

The employer violated RCW 41.56.140(4) and (1).

ISSUE 2 - EMPLOYER'S TOTAL BARGAINING CONDUCT - REPRISAL FOR CHANGE OF REPRESENTATIVE?

Allegations

I have outlined the employer's conduct in my discussion of the first issue above. The SCCA summarizes in its amended complaint that the totality of the employer's alleged unlawful conduct included cancelling meetings, advancing proposals that made little or no movement, continuing to insist on intolerable positions, refusing to send someone to the table who could make counter-proposals, and refusing to explain the basis for its proposals, all in reprisal for the employees having exercised their right to change bargaining representatives.

LEGAL STANDARD

The test for interference is whether a typical employee could, in the same circumstances, reasonably perceive the employer's action as discouraging his or her union activities. *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004). A complainant is not required to show intent or motive for interference, or that the employee involved was actually coerced, or that the respondent had union animus. *King County*, Decision 8630-A (PECB, 2005). The complainant bears the burden of demonstrating that the employer's conduct resulted in harm to protected employee rights. *City of Wenatchee*, Decision 8802-A.

ANALYSIS

The employer's "aggressive bargaining," as delineated above, illustrates its lack of effort to reach a common ground necessary for a *collective* bargaining agreement. The totality of conduct standard tests the quality of negotiations between the parties.

The employer's continued insistence on proposals predictably unacceptable to the SCCA, its refusal to make any concession in nearly every area and its prolonged adherence, first without explanation and then without clear justification in principle, and on maintaining its original positions, indicates surface bargaining. In and of itself the employer's proposed use of its own personnel guidelines is not necessarily bad faith bargaining. However, within the context of this bargain the employer stepped over the line. The totality of circumstances in these negotiations compels me to find the employer bargained in bad faith. The lack of convincing evidence otherwise, in this cases leads me to believe it was retaliation for rejecting AFSCME and organizing their own union, the SCCA.

CONCLUSION

I find the employer interfered with the employees' rights, retaliated against those employees and refused to bargain in good faith by the totality of its bargaining conduct.

ISSUE 3 - DISCRIMINATION AND/OR INTERFERENCE?

Allegations

SCCA further complains that County Executive Reardon discriminated against its representative, Kendra Mooney, by his words and actions on April 12, 2006. On that date, both Mooney and Reardon attended

an ice hockey game with their families at the Everett Event Center. SCCA argues that, although Reardon interacted both professionally and socially with AFSCME representatives, he refused even to meet with SCCA representatives or respond to SCCA correspondence. Further, SCCA alleges that Reardon made inappropriate comments concerning the SCCA attorney and his bargaining tactics. SCCA avows Reardon stated that as long as SCCA chooses to be represented by that particular law firm the County negotiations will not progress.

Legal Standard - Discrimination

The standard for sustaining a discrimination charge is well settled. The substantial motivating factor test from *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991), and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991), was adopted by the Commission in *Educational Service District 114*, Decision 4361-A (PECB, 1994). That test for discrimination requires:

1. The complainant must establish a prima facie case of discrimination, showing that:
   a. One or more employees exercised rights protected by an applicable collective bargaining statute (hereinafter "protected union activity"), or communicated to the respondent an intent to do so.
   b. One or more employees were deprived of some ascertainable right, status, or benefit.
   c. A causal connection exists between the protected union activity and the action claimed to be discriminatory.
2. If the complainant makes out a prima facie case, the respondent must set forth lawful reasons for its actions.
3. If lawful reasons are cited, the complainant bears the burden of proof to show that the reasons given were nevertheless:
   a. Pretexts designed to conceal the true motivation; and/or
   b. Protected activity was a substantial motivating factor for the disputed action.

Incident at the Hockey Game

Mooney arrived at the events center before Reardon; as she walked toward the doorway to their seats with her husband and several others, she noticed Reardon entering the events center. After asking her husband's opinion, she approached Reardon, identified herself as a member of the clerks' union, and asked if she could ask him some questions. He stopped to talk with her. Both testified she was very nervous and agitated during their approximately ten minute conversation. Mooney asked Reardon what he knew about the current state of bargaining with the SCCA; he replied that he wanted to continue bargaining and believed the employer team had acted in accordance with the law. Mooney asked Reardon about his relationship with AFSCME representatives; he responded that he meets with union leaders frequently as the county executive. Mooney and Reardon disagreed whether or not Reardon made disparaging remarks about the book written by an attorney in the firm representing SCCA. Reardon claimed to have only seen the book; SCCA subpoenaed the book and Reardon averred he did not have a copy to produce. Mooney credibly testified Reardon told her as long as SCCA kept threatening the county they would not get anywhere. Mooney testified further that Reardon responded that it was not her personally, the problem was the SCCA attorney's threats. While there was conflicting testimony at the hearing about whether or not Reardon reached out and put his hands on Mooney's shoulders, I do not believe my ability to determine whether discrimination or interference occurred depends on the truth of that point.

Analysis

I believe Mooney was engaged in protected activity when she approached Reardon and asked him about his knowledge and participation in negotiations.

However, the SCCA did not present any evidence that Mooney was deprived of an ascertainable right, status or benefit due to that conversation.

Neither did the SCCA establish that her conversation with Reardon had any ascertainable effect on the bargaining process. Their meeting occurred in April and the parties were still negotiating six months later. There was no change in the pattern of negotiations due specifically to this incident.

Conclusion

The SCCA failed to establish a prima facie case of discrimination.

Legal Standard - Interference

The test for interference is whether a typical employee could, in the same situation, reasonably perceive the employer's action as discouraging his or her union activities. *City of Wenatchee*, Decision 8802-A. The SCCA is not required to show intent or motive, or that the employee was actually coerced or felt threatened, or that the employer had union animus. *King County*, Decision 8630-A (PECB, 2005). Even if non-coercive in tone, a communication may be unlawful if it has the effect of undermining a union. *City of Seattle*, Decision 3566-A (PECB, 1991).

The Commission has found that employer communications to employees could be interference under any one, any combination, or all of the following criteria:

- Is the communication, in tone, coercive as a whole?
- Are the employer's comments substantially factual or materially misleading?
- Does the communication disparage, discredit, ridicule, or undermine the union? Are the statements argumentative?

- Did the union object to such communication during prior negotiations?
- Does the communication appear to have placed the employer in a position from which it cannot retreat?

Grant County Public Hospital District 1, Decision 8378-A (PECB, 2004).

Analysis

These allegations center around the incident at the hockey game discussed above.

Four witnesses testified at the hearing concerning the events on April 12: Mooney and her spouse; Reardon and his spouse. However, neither of the supporting witnesses testified that they actually heard the conversation between the two principals. Reardon believes he was cordial toward Mooney. He did not remember the details of their conversation. This incident was simply one of many public interactions for him. On the other hand, Mooney had a vivid recollection of their discussion and her feelings at that time. She credibly testified she felt intimidated by Reardon's behavior. The applicable test is how the employee perceives the statement, not how the employer characterizes it.

When I consider this incident either alone or in conjunction with the rest of the employer's bargaining conduct, which Mooney had observed, I believe a reasonable employee would feel the employer was acting in a negative manner because of his or her union activities. Bargaining unit employees were feeling substantial financial consequences by April 2006 due to exercising their statutory right to choose their representative. Now Mooney felt intimidated by Reardon's comments about her choice of representative.

CONCLUSION

The employer actions asserted by SCCA do not meet the three prong test for discrimination.

The county executive's behavior interfered with employee rights under RCW 41.56.140(1).

ISSUE 4 - DOMINATION OR ASSISTANCE?

Allegations

The SCCA alleges the incident at the hockey game on April 12 also amounts to an attempt by the employer to dominate it or its representative. Additionally, the SCCA complains that the employer's bargaining conduct favored AFSCME and that the employer intended to inhibit the employees' free choice of representative.

LEGAL STANDARDS

Standard for Domination

An employer violates RCW 41.56.140(2) when it controls, dominates or interferes with a bargaining representative by involving itself in the internal affairs or finances of the union, or attempts to create, fund, or control a "company union." *State - Patrol*, Decision 2900 (PECB, 1988); *City of Anacortes*, Decision 6863 (PECB, 1999). A domination violation requires proof of employer intent. *King County*, Decision 2553-A (PECB, 1987); *Lower Columbia College*, Decision 8117-B.

Analysis

No evidence was presented to prove domination as defined in the above terms. The employer did not attempt to involve itself in the internal affairs of the SCCA nor did it attempt to control it as a

company union. However, I now look to another application of the statute, assistance.

Standard for Assistance

In *King County*, the Commission ruled an "unlawful assistance" violation requires proof of employer intent to assist one union (bargaining representative within the meaning of RCW 41.56.030(3)) to the detriment of others. The Commission affirmed the term "assistance" as defined by two earlier cases, *Renton School District*, Decision 1501-A (PECB, 1982) and *Pierce County*, Decision 1786 (PECB, 1982). In *Renton* and *Pierce County*, both examiners ruled that if a reasonable employee could perceive that the employer even *appeared* to favor one union over another, an unlawful assistance violation could be found. The propriety of the employer's conduct must be assessed in light of all of the facts to ascertain whether it intended to assist one union over another.

Analysis

In approximately eighteen months of bargaining[31] the parties here were unable to reach an agreement, particularly on economic issues. Curiously, however, in half that time[32] the employer bargained away two announced important goals,[33] containment of medical premium and wage costs, while negotiating with AFSCME. It removed the cap on its medical contribution and capped the employee premium instead for AFSCME. The AFSCME agreement capped the employee-only premium at $58, and the full family medical premium at $235,[34] while the same

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[31] Including mediation.

[32] The new employee premium cap appears in the AFSCME agreement signed in September 2005.

[33] See the employer's written rationale above.

[34] My online review of the AFSCME agreement for 2006-2009 shows identical costs for all three years of that agreement.

premiums for the clerks rose to $132 and $496 respectively. The employer also bargained a 2.5% wage increase[35] for the AFSCME bargaining unit while concurrently offering 1.8% to SCCA. My review of the 2006 AFSCME agreement does not present an example of any trades for these important items. I cannot find another reasonable explanation for the employer's refusal to cap the SCCA employee medical premium or for the difference in its wage proposal, or for the employer's general bargaining conduct other than to favor AFSCME.

CONCLUSION

The circumstances above illustrate employer actions that I believe a reasonable employee would have perceived as a preference for AFSCME over the SCCA. Coupled with all the other behaviors exhibited by the employer during the course of this bargain it is appropriate to find an unlawful assistance violation. In fact the outcome of this bargain may have a chilling effect on other employees who may desire a representative of their choice. I believe the employer intended to favor AFSCME over the newly formed association. I find this record sufficiently establishes that a reasonable employee would perceive the employer appeared to favor AFSCME over SCCA and acted in reprisal against the SCCA members who repudiated AFSCME.

REMEDY

The SCCA requests a cease and desist order, posting of notice of unfair labor practice, publication of the notice in local newspapers, reading of the notice into the minutes of the Snohomish County Council meeting, an order that the employer pay 100% of any

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[35] The cited CPI was 2.25%.

increases in medical insurance premiums in 2006 and beyond, an order requiring the parties to submit all issues that are mandatory subjects of bargaining to interest arbitration, an order that the arbitration award supercede any agreements or terms implemented by the employer, and an award of attorney's fees and costs.

The employer asserts an affirmative defense that its actions are consistent with and warranted by the law. It requests an order consistent with its lawful actions and dismissal of the complaint.

RCW 41.56.160 grants the Commission authority to issue appropriate orders to remedy unfair labor practices. The Supreme Court of Washington described that authority in *Municipality of Metropolitan Seattle v. PERC,* 118 Wn.2d 621, 633 (1992) as:

> [W]e interpret the statutory phrase "appropriate remedial orders" to be those necessary to effectuate the purposes of the collective bargaining statute and to make PERC's lawful orders effective.

The customary remedies for "interference" and "refusal to bargain" unfair labor practice violations include an order that the offending party cease and desist from its unlawful conduct, that the offending party post notice informing the affected employees of its unlawful conduct (and its commitment to cease and desist from such conduct) and the reading of the notice into the minutes of the next public meeting of the governing body of elected officials. Additionally, the offending party must bargain in good faith upon request of the other party to the collective bargaining relationship. Where an unlawful assistance violation has been found the offending party has been ordered to cease and desist from those actions which appeared to assist one union over another and to restore the status quo in effect before the violation occurred.

The remedial orders issued under the statute generally return the employees or the union to the same situation that lawfully existed prior to the employer committing the unfair labor practice. Extraordinary remedies have been ordered in a few selected cases, in order to make the remedial order effective. *City of Seattle,* Decision 3593 (PECB, 1990). In *METRO,* Decision 2845-A, *aff'd* 118 Wn.2d 621 (1992), the Commission found it was appropriate to impose an extraordinary remedy (interest arbitration) because of that employer's "repeated efforts to subvert the bargaining process." After consideration of the entire record in this case, I believe an extraordinary remedy will be necessary to restore the status quo ante and provide relief for these employees.

In addition to the letter from County Clerk Daniels that appeared in the *Everett Herald,* a second letter from Daniels was presented into evidence. In that letter, dated June 9, 2006, Daniels suggests a possible solution to the "impasse" in bargaining would be binding arbitration. Interest arbitration has been ordered when the employer has consistently refused to perform its legal obligations, in spite of prior orders to do so. *Metro,* Decision 2845-A (PECB, 1988). The fact pattern is not quite the same as that exhibited in *Metro,* however, this employer's unlawful conduct caused employees in this bargaining unit to suffer an unwarranted financial hardship and undermined their collective bargaining rights.

The fundamental employee right provided under Chapter 41.56 RCW is the right to choose an exclusive representative free of employer interference. As noted above, I believe the record clearly supports a finding that the employer's behavior in bargaining was undertaken in reprisal for these employees having exercised that fundamental right. The agreement proposed by this employer, containing fewer rights and benefits than non-represented employees received, was predictably unacceptable to this or any union. I believe any

reasonable employee would feel "punished" for exercising their rights if faced with this type of bargaining.

The intent of the statute is "to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing . . . ." RCW 41.56.010. While the statute prefers a voluntary agreement by the parties themselves, the employer's pattern of unlawful behavior makes that appear impossible in this case. These parties need a period of labor peace to put the issues of this bargain behind them and to develop a productive bargaining relationship. I believe the appropriate remedy to restore the status quo ante in this case is interest arbitration. An interest arbitrator will establish the collective bargaining agreement that has proved unachievable by virtue of the employer's conduct.

The parties shall submit the issues as proposed in the SCCA proposal dated October 25, 2005, and the employer proposal dated November 21, 2005, to interest arbitration using the procedures of RCW 41.56.450, et seq., excepting mediation, certification letter, and an arbitration panel shall not be utilized as contemplated by that section. The decision of the arbitrator shall be final and binding on both parties.

The arbitrator may be chosen either by requesting a Commission staff member to be assigned by the Executive Director or from a list of seven members of the Commission's dispute resolution panel. The SCCA must agree to request a Commission staff member as arbitrator. If the parties choose to utilize the services of a dispute resolution panel member, that person will be chosen by alternating striking names from the list with the employer striking the first

name. The employer will pay all the fees and expenses billed by the selected arbitrator.

I decline to award attorney's fees as I believe the above extraordinary remedy corrects the harm caused by the employer's unlawful bargaining conduct and will deter such conduct in the future.

FINDINGS OF FACT

1. Snohomish County is a "public employer" within the meaning of RCW 41.56.030(1).

2. Aaron Reardon is the County Executive. Mark Soine is the Deputy County Executive. Pam Daniels is the elected County Clerk. Howard Strickler is the labor consultant hired by the employer to be its chief negotiator.

3. The Snohomish County Clerks Association (SCCA) is a "bargaining representative" within the meaning of RCW 41.56.030(3). It was certified as the exclusive bargaining representative of an appropriate bargaining unit of employees of the County Clerk's Office on February 8, 2005.

4. Initially SCCA hired William Barrett to be its chief negotiator. Kendra Mooney was elected as the SCCA president in February 2005. Michelle Strohrmann was elected SCCA president in April 2006 and remained in that office at the conclusion of the hearing in this matter. Christopher Casillas began representing the SCCA at the mediation session held on October 25, 2005.

5. The American Federation of State, County, and Municipal Employees (AFSCME), a "bargaining representative" within the

meaning of RCW 41.56.030(3), represents four bargaining units that include approximately 1492 Snohomish County employees. Prior to February 8, 2005, AFSCME represented the bargaining unit at issue here.

6. AFSCME negotiated a master collective bargaining agreement with the employer that included an addendum covering the specific working conditions of the bargaining unit currently represented by SCCA. That agreement was in effect until December 31, 2004.

7. The employer and SCCA held their first bargaining session on March 31, 2005.

8. The employer made its first contract proposal on May 3, 2005, based on Title 3A of the County Code, the "personnel rules." By using the county code as the basis for its proposal, it proposed a substantial reduction to the working conditions in effect prior to the SCCA's representation of the bargaining unit, including proposed reductions in compensatory time, no job sharing, no double time for work on Thanksgiving and Christmas, no deferred compensation, no just cause for discipline, and no grievance arbitration.

9. The SCCA made its first proposal on June 7, 2005. Its proposal was based on the AFSCME agreement in effect for that bargaining unit prior to February 2005. It made a second proposal, including wages and benefits, on July 8, 2005.

10. At the employer's request, the parties spent the next eight negotiations sessions, a period of approximately four months, reviewing the SCCA's proposal line by line. No other bargaining occurred during this period of time. The employer's

explanation that it required that amount of time to review the SCCA proposal is not credible.

11. The employer made its second proposal on September 7, 2005. While new articles were added, the employer did not substantively modify its May 3, 2005, proposal to use its own personnel rules as the basis of the collective bargaining agreement. The employer had not made a wage proposal by September 2005. The September 7 proposal did, however, include the actual language of several sections of the personnel rules, rather than simply referencing the county code.

12. After thirteen bargaining sessions, the parties filed a joint request for mediation on September 16, 2005.

13. On September 19, 2005, the employer signed a one year collective bargaining agreement with AFSCME that contained an employer paid deferred compensation not to exceed 1% of wages, a general wage increase of 2.5% and a cap on the employee share of medical premiums.

14. The employer's rationale for not offering deferred compensation or a cap on the employee share of medical premiums as part of the SCCA collective bargaining agreement was not consistent with its actions in bargaining with AFSCME, nor was its offer of a lesser wage increase to SCCA members consistent with those actions.

15. Mediation sessions were held on October 25, November 21, December 6, 7, and 21, 2005; and February 1, February 3, March 8, March 15, March 31, April 27, May 15, October 13 and October 18, 2006.

16. On October 25, 2005, SCCA made a counter proposal in legislative format that withdrew its proposal for an employee bill of rights and modified its language on a number of issues in an effort to accommodate what it understood to be the employer's concerns. On that date, the SCCA explained its concerns about numerous changes to the status quo proposed by the employer. The employer responded, "Sorry, that is the way it is."

17. On November 21, 2005, the employer rejected the SCCA counter proposal without providing a rationale except for general statements about retaining management rights or not wanting the language included in the agreement. The employer made a proposal that continued to include the same reductions in working conditions it originally put forward in May, and that retained the proposed cap on its share of the medical premium. It made its first general wage proposal of 80% of the CPI.

18. SCCA accepted the employer's suggested change to job sharing language, inclusion of deferred compensation and a salary survey, on December 6, 2005, and incorporated the employer's proposed language on numerous sections of the collective bargaining agreement.

19. On February 3, 2006, the employer increased its wage offer to 90% of the CPI. It retained the employer cap on medical premiums, however, and maintained the majority of its original language on non-economic issues.

20. During February 2006, the employer distributed information packets regarding medical plans and contribution rates for all employees. An open enrollment period for medical insurance was scheduled to occur from March 1 through 14. The information from the employer showed that the contribution rate for

employee-only coverage for employees represented by SCCA was more than double that of employees represented by AFSCME.

21. On March 6, 2006, Daniels wrote a letter to the county executive and the county council supporting the lower premiums for the employees in her department that the employer had negotiated with AFSCME and given to its non-represented employees.

22. On March 10, 2006, SCCA presented a new proposal to the employer. That proposal included acceptance of eight of the employer's November 21 proposals as well as modification of five others in a manner SCCA hoped would be acceptable. The employer's team declined to respond to the SCCA proposal because it wanted to talk to Soine before making a counter proposal.

23. The employer cancelled a mediation session scheduled for March 15, 2006, because Soine was angry over an article in the *Everett Herald* concerning the rise in medical premiums for employees in the SCCA bargaining unit. That article referenced the letter described in paragraph 21 of these findings.

24. The employer's cancellation of the March 15 meeting was in retaliation for the article in the newspaper concerning the bargaining unit's perceived lack of bargaining progress as well as a deliberate delay of the bargaining process.

25. At a mediation session on March 31, 2006, the employer withdrew the language on job sharing, salary survey and deferred compensation that it had agreed to in its December 21, 2005, proposal. The employer did not combine its with-

drawal of those agreements with other changes that might have made its proposal more attractive to the SCCA.

26. The employer consistently refused to extend the employee cap on medical insurance premiums to SCCA that it agreed to for the bargaining units represented by AFSCME.

27. The employer historically extended the general wage increase and medical premiums it bargained with AFSCME to the unrepresented employees, and again did so during the time period germane to these proceedings.

28. On April 12, 2006, at a hockey game, bargaining unit employee and former SCCA officer Mooney approached County Executive Reardon and had a conversation with him about the progress of negotiations. During that conversation, the county executive leaned toward Mooney and told her that the lack of bargaining progress was not her fault, but was due to the firm of attorneys representing the unit. A typical employee could perceive that comment as discouraging his or her union activities.

29. Mooney was engaged in protected activity when she approached Reardon and engaged him in discussions about negotiations. She was not deprived of any ascertainable right, status or benefit due to that conversation, nor did the conversation result in any ascertainable change in the employer's approach toward bargaining.

30. On April 27, 2006, the employer for the first time provided a written rationale for its bargaining position. The bulk of the rationale asserted in that document was not credible or was unsupported by the record. The employer's stated reasons

regarding its economic proposals are inconsistent with its behavior toward its unrepresented employees or toward those represented by AFSCME.

31. By the actions described in paragraphs 13, 26, and 27 above, the employer did not aggressively work to contain costs with all employees, as it claimed during negotiations with this bargaining unit.

32. The employer gave its chief negotiator, Howard Strickler, the general authority to bargain.

33. The totality of the employer's actions in bargaining described in these findings of fact are not consistent with its obligation to bargain in good faith.

34. The employer's conduct in bargaining with SCCA was in reprisal for bargaining unit employees having exercised their right to change their bargaining representative.

35. The employer's total bargaining conduct assisted or favored another union over the Snohomish County Clerk's Association and inhibited that union's ability to represent its members.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. The employer's bargaining conduct described in findings of fact numbers 8, 10, 11, 23, and 24 constitutes an unlawful delay and frustration of the bargaining process and violated RCW 41.56.140(4) and (1).

3. By failing to provide reasons for its bargaining proposals sufficient for the union to understand what might be acceptable to the employer and formulate its proposals accordingly, the employer violated RCW 41.56.140(4) and (1).

4. By withdrawing from agreements, as described in paragraphs 18 and 25 above, on job sharing, salary survey, and deferred compensation, the employer bargained regressively and violated RCW 41.56.140(4) and (1).

5. The employer's total bargaining conduct described in the foregoing findings of fact was a failure to bargain in good faith and violated RCW 41.56.140(4) and (1).

6. The employer's total bargaining conduct described in the foregoing findings of fact interfered with employee statutory rights and violated RCW 41.56.140(1).

7. The employer's total bargaining conduct described in the foregoing findings of fact unlawfully assisted one union over another and violated RCW 41.56.140(2).

8. An employer representative's disparaging remarks on April 12, 2006, about the attorney hired by SCCA, interfered with employee rights and violated RCW 41.56.140(1).

9. By proposing a strong management rights clause the employer did not demand the SCCA waive its right to bargaining over changes in working conditions.

10. The employer did not insist on maintaining language that might have been found to constitute a waiver concerning certain mandatory subjects of bargaining.

11. The employer did not bargain to impasse over illegal or permissive subjects.

12. The employer did not refuse to send a bargaining representative to the table with authority to bargain.

13. The employer did not discriminate against an employee representative by the conduct of the county executive at a hockey game on April 12, 2006, and did not thereby violate RCW 41.56.140(1).

14. The employer's conduct described in the foregoing findings of fact was an egregious interference with the rights of employees guaranteed under Chapter 41.56 RCW; these actions call for extraordinary measures under RCW 41.56.160 to remedy the violations found in this case.

ORDER

Snohomish County, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Engaging in unlawful delays and frustration of the collective bargaining process with the Snohomish County Clerks Association;

   b. Refusing to fully explain the reasons for its proposals to the Snohomish County Clerks Association;

   c. Engaging in regressive bargaining with the Snohomish County Clerks Association;

d. Bargaining in bad faith by the totality of its conduct in bargaining with the Snohomish County Clerks Association;

e. Interfering with employees' rights to choose their exclusive representative;

f. Assisting another union to the detriment of the Snohomish County Clerks Association;

g. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under by the laws of the state of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

a. Submit a request to the Public Employment Relations Commission for interest arbitration within twenty days of the date of this decision.

b. A list of seven members of the Commission's dispute resolution panel may be requested at that time. The arbitrator will be chosen by the SCCA and the employer each striking a name from the list one at a time beginning with the employer.

c. Pay all the fees and expenses billed by the arbitrator

d. In lieu of (b) above within twenty days of this decision, with the agreement of the SCCA the employer may submit a request for a Commission staff member, chosen by the

Executive Director of the Public Employment Relations Commission, as arbitrator.

e. Using either (b) or (d) above, choose an arbitrator within forty-five days of this decision and notify the Compliance Officer of the Public Employment Relations Commission of the name of the arbitrator. If for any reason the parties are unable to choose an arbitrator, either party may request the assistance of the Compliance Officer.

f. The SCCA proposal dated October 25, 2005, and the employer's proposal dated November 21, 2005, shall define the scope of the arbitration hearing. Any disputes as to the issues shall be resolved by the arbitrator.

g. Post copies of the notice attached to this order in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

h. Read the notice attached to this order into the record at a regular public meeting of the Snohomish County Council, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

i. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice attached to this order.

j. Notify the Compliance Officer of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Compliance Officer with a signed copy of the notice attached to this order.

ISSUED at Olympia, Washington, this 13th day of August, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

STARR KNUTSON, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

Case 20074-U-06-5105

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY interfered with employee rights and refused to bargain in good faith by our total conduct during the bargaining for an initial collective bargaining agreement with the Snohomish County Clerks Association.

WE UNLAWFULLY interfered with employee rights by the disparaging remarks made by the employer's representative at a hockey game on April 12, 2006.

WE UNLAWFULLY refused to bargain with the Snohomish County Clerks Association by attempting to delay or frustrate agreement for an initial collective bargaining agreement.

WE UNLAWFULLY refused to bargain with the Snohomish County Clerks Association by failing to provide reasons for our proposals during the bargaining for an initial collective bargaining agreement.

WE UNLAWFULLY refused to bargain by repudiating our prior agreement on job sharing, a salary survey, and deferred compensation during bargaining with the Snohomish County Clerks Association.

WE UNLAWFULLY attempted to assist another union over the Snohomish County Clerks Association as evidenced by our total bargaining conduct.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL submit this collective bargaining agreement to interest arbitration.

WE WILL pay the usual and customary fees of the interest arbitrator selected.

WE WILL select an arbitrator by alternately striking names from the list provided or mutually request a Commission staff arbitrator.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: _____ Snohomish County

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's web site, www.perc.wa.gov.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 08/13/2007

The attached document identified as: DECISION 9834 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBBIE DUFFIELD

CASE NUMBER:	20074-U-06-05105	FILED:	01/06/2006	FILED BY:	PARTY 2
DISPUTE:	ER GOOD FAITH				
BAR UNIT:	CLERICAL				
DETAILS:	-				
COMMENTS:					

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